

INTERSTATE EQUIPMENT COMPANY,
Plaintiff,

v.

ESCO CORPORATION,
Defendant.

THIS MATTER is before the Court following the issuance of Findings of Fact and Conclusions of Law on July 14, 2014 (Doc. 78), and upon receipt of materials from the parties in response thereto. (Docs. 79–83).

Within the Findings of Fact, the undersigned noted the parties' stipulation that *as of the time of trial*, Mr. Eller was "incapacitated and unable to testify." (Doc. 78 at 6, ¶ 19). Similarly, the Court noted that Mr. Eller's *present ability* to manage his personal business and financial affairs remained in question. (Id. at 5, ¶ 18 and n. 7). Accordingly, the undersigned placed the burden on IEC to produce within seven days of the Findings of Fact and Conclusions of Law its plan to accomplish and effect a release of any security interest belonging to Mr. Eller in IEC's inventory to the end that IEC's plan and assurance of title must be satisfactory the Court. (Id. at 23, ¶ 14 and 30, ¶ 2).

The Court has reviewed the affidavits from Mr. Frank Eller and IEC, both dated July 21, 2014, as well as correspondence from counsel for ESCO, Ms. McKnew, dated July 22, 2014 and 25, 2014, and from Plaintiff's counsel, Mr. Eisele, dated July 24, 2014. It is the order of the Court that a qualified medical professional familiar with Mr. Eller's mental condition provide a

letter to the Court attesting to his or her opinion of Mr. Eller's mental competency as of the date of current exam. A letter similar to the one presented to the Court from a Mooresville, North Carolina medical doctor during the bench trial by Mr. Eisele explaining Mr. Eller's inability to testify and underlying the parties' stipulation that Mr. Eller could not physically testify would suffice. The letter may be submitted under seal as an exhibit. The Court will expect that evaluation of Mr. Eller's competency and production of information to the Court can be accomplished within ten days of the instant Order.

IT IS THEREFORE ORDERED that IEC shall provide a letter to the Court, to be filed **under seal** as an exhibit to Document 78 and / or to this Order, from a qualified medical professional familiar with Mr. Eller's ongoing mental condition within ten (10) days.

Signed: July 28, 2014

A handwritten signature in black ink, reading "Richard L. Voorhees". The signature is fluid and cursive, with the first name "Richard" and last name "Voorhees" clearly legible.

Richard L. Voorhees
United States District Judge

